IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 238 AND 239 OF 2002.

FIRST APPEAL NO. 238 OF 2002.

Dr. Caetano Jose Filomeno
Jacinto de Loiola Pereira, alias,
Dr. Caetano de Loiola Pereira,
son of late Ambrosio Octaviano Loiola Pereira,
major, Indian Nationa, having
clinic at Eye Care Centre,
211, Niana Gracias Plaza,
Near Loyola High School, Margao, Goa. .... Appellant.

Versus

1. **Deputy Collector,**
   South, Sub-Division, Margao,
   Collectorate of South Goa,
   Margao, Goa.

2. The Directorate of Tourism,
   Panaji, Goa. .... Respondents.

Shri F.E. Noronha, Advocate for the Appellant.

Shri P.A. Kamat, Government Advocate for the Respondents.

FIRST APPEAL NO. 239 OF 2002.

1. State of Goa,
   Through the Deputy Collector,
   South Sub-Division, Margao, Goa.

2. The Director of Tourism,
   Panaji, Goa. ..... Appellants.

VERSUS

Dr. Caetano Jose Filomeno Jacinto
de Loila Pereira, alias Dr. Caetano
de Loila Pereira, Holy Family House,
Opp. Cine Lata, Margao, Goa. ..... Respondent.

Shri P.A. Kamat, Government Advocate for the Appellants.

Shri F.E. Noronha, Advocate for the Respondent.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE OF RESERVING THE JUDGMENT: 14.09.2004
DATE OF PRONOUNCING THE JUDGMENT: 28.09.2004

J U D G M E N T: (PER BRITTO, J.)

These appeals are filed by both the parties in L.A.C. No. 146/1993 against the Judgment/Award dated 10.4.2002 of the learned IInd Additional District Judge, Margao.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said case.

3. Some facts are required to be stated to dispose of these appeals.

By virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (Act, for short) and published on Gazette dated 23.2.89, the Government acquired 20250 sq.m. of the land of the applicant for the purpose of development of Benaulim Beach in Salcete Taluka, namely for the construction of restaurant, changing rooms, toilets and other facilities for tourists and by virtue of an Award dated 1.4.1999 the Land Acquisition Officer awarded to the applicant compensation at the rate of Rs.12/- per sq.m.

In fixing the said compensation at the rate of Rs.12/- per sq.m. The L.A.O. took into consideration three sale deeds by which land was sold at the rate of Rs.10/-, Rs.52/- and Rs.10/- per sq.m., respectively.

Dissatisfied with the said Award, the applicant sought a reference to be made under Section 18 of the Act and in the said reference, claimed enhancement at the rate of Rs.250/- per sq. m. The applicant in the said reference, relied upon (i) an opinion of an expert and (ii) three sale deeds: the first was dated 5.5.89 by which land admeasuring 2007 sq.m. was sold at the rate of Rs.74.73 per sq.m. (Exh.AW1/C); the second was dated 28.6.89 by which land admeasuring 729 sq.m. was sold at the rate of Rs.176.40 (Exh.AW1/B).; the third was dated 10.4.89 by which land admeasuring 2000 sq.m. was sold at the rate of Rs.75/- per sq.m.

4. The learned Addl. District Judge ignored the opinion of the expert without a whisper.

5. The learned Addl. District Judge relied upon the third sale deed as basis to fix the compensation but did not disclose any reason as to why the other two sale deeds were not preferred. General ly a sale deed which is comparable and which is proximate both in point of time and place is required to be preferred. The learned Addl. District

Judge, after having taken deduction of 30% over the sale price of Rs.75/- per sq.m. fixed the compensation at the rate of Rs.54/- per sq.m. The learned Addl. District Judge considering that an area of 15000 sq.m. was lying within 200 meters of the high tide line took a further deduction of 50% and fixed the compensation at the rate of Rs.27/- per sq.m. In our view, the entire approach of the learned Addl. District Judge has been rather erroneous.

6. The applicant has filed the present appeal , again claiming compensation at the rate of Rs.250/- per sq.m. while the respondents have filed the appeal praying that the Award of the learned Addl. District Judge be quashed and set aside and that of the L.A.O. be restored.

7. Admittedly, the applicant's land was bounded on the western side by the Arabian sea and on the eastern side by the land of Comunidade and was situated at a distance of about 100 meters or so from Benaulim-Margao road and at a distance of 4 to 5 kms. from Margao city. Since the western boundary of the applicant's land was the sea, it could be said that part of the land formed part of Benaulim beach. The fact that the applicant's land was facing the sea, it is contended on behalf of the applicant, was a great advantage as it was situated in an ideal location for a hotel project to be put up, which factor has not been considered by the learned Addl. District Judge. On the other hand, it is contended on behalf of the

respondents , that this situation was a great disadvantage , in that a portion of that land could not be put to any construction use.

8. In order to appreciate this controversy, reference could be made to a Division Bench Judgment of this Court in the case of **Mr. Cruz Joseph D'Souza v. Village Panchayat of Parra and another (2002 (1) Goa L.T. 213)**. In this case this Court had noted that the then Prime Minister Mrs. Indira Gandhi had issued an executive order on 27.11.1981 to all the States and the Union territories imposing restriction on development and building constructions between the HTL and 500 m. and that several representations were made by the States and especially those which had large beaches attracting tourists, to reduce the area of restriction and accordingly, no development zone was reduced between HTL and 200 metres therefrom. On 11.6.1986 the Government of India relaxed the 500 m. ban on construction for tourism purposes and thereafter the Inter Ministerial Council issued policy guidelines on 16.6.1986 prohibiting constructions within 200 metres of HTL or on the sandy stretches.

9. It is therefore obvious that on the date of Notification i.e. 23.2.89 there was prohibition of constructions within 200 m. of the HTL or on the sandy beaches.

10. Then came the Coastal Regulation Zone Notification dated 19.2.91

issued under the Environment (Protection) Act, 1986 by which the area upto 200 m. from HTL is to be earmarked as 'No Development Zone' . No construction was to be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density. However, the following uses were made permissible in this zone:- agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water. Development of vacant plots between 200 and 500 m. of HTL in designated areas of CRZ III with prior approval of Ministry of Environment and Forest (MEF) permitted that construction of hotels/beach resorts for temporary occupation of tourists, visitors subject to the conditions as stipulated in the guidelines at Annexure II. Construction/reconstruction of dwelling units between 20 and 500 m. of HTL were permitted so long it was within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction was to be subject to the condition that the total number of dwelling units shall not be more than twice the number of existing units. Total cover area of all floors should not be more than twice the number of existing units; total cover area on floors should not exceed 33% of the plot size; the overall height of construction should not exceed more than 9 m. and construction should not be more than two floors (ground floor plus one floor).

11. The Award of the LA.O. shows that the entire acquired area was

sandy garden land and was situated within 400 m. of HTL. The applicant admitted that an area of 15,000 sq.m. was falling within 200 m. of the HTL and an area of about 5000 (should be 5250) was falling beyond the said 200 m. from HTL. The applicant also admitted that no development was possible in the zone of 200 sq.m. from HTL, and , yet the learned Addl. District Judge proceeded to fix the market value for this area after taking a deduction of 30% from the sale price of Rs.75/- per sq.m. and after reducing it by another 50%.

12. The question of deduction would have come only in case this area of 15000 sq.m. was suitable for construction. In our view this area of 15000 sq.m. was practically of no use for the construction purpose to the applicant nor had the applicant led any evidence to show that he could have put the said area to any other use. The contention of the applicant that the said area of 15000 sq.m. could have been sold by the applicant as part of the entire property for the purpose of setting up a hotel project, appears to be without any substance because earlier and as admitted by the applicant, the entire property of the applicant was severed into two parts by the construction of a road by the Directorate of Fisheries and probably the entire area, west of the said road and in between the sea and the road fell in the said prohibited zone of 200 m. from HTL. On account of the said road which divided the applicant's property in almost two halves, no willing purchaser would have purchased the

western part of survey No.365/2 to set up any hotel project on the eastern part of survey No.365/2 and the remaining land of the applicant surveyed under No.363/1. In our view therefore an area of 15000 sq.m. which was lying in between 200 m. of HTL could not have been assessed as land having building potential on basis of any of the sale deeds because no building was permitted thereon.

13. The report of AW.5 was prepared after nine years from the date of notification and this court has taken a consistent view that such reports are of no use for the purpose of determining compensation (see 1996 (1) G.L.T. 8). Moreover, AW.5 did not give any sound reasons as to why he had valued the property at the rate of Rs.150/- per sq.m. His opinion was nothing but guesswork with no expertise involved in it. All that he has stated was that: " The rate of the acquired land on 23.2.89 could have been about Rs.150/- as per the location of the plots compared, but this is if the plot was smaller in dimension." In fact, he had not used any known methods to arrive at the said value of Rs.150/-" and his opinion was a mere guesswork.

14. In our opinion, and as rightly submitted on behalf of the Government, the sale deeds dated 5.5.89 as well as 10.4.89 could not have been used as a guide for the purpose of fixing compensation for the remaining land of the applicant. One of the considerations for the sale deed dated 5.5.89 as can be seen from it, was that the buyer

was a mundkar of the seller. Not only that, the land sold also had a house thereon. Therefore, it could not be said that the said sale deed reflected a price of land which a prudent and willing purchaser would offer to a willing vendor in normal market conditions. Likewise, the sale deed dated 10.4.89 also could not have been used as a safe guide. In support of this sale deed, AW.2 Silva was examined and he clearly admitted that as he was a neighbour of the seller and he had good relations with him, the price was kept low. At the same time he admitted that he had purchased the said property because it was adjoining his property and he had purchased the same because he had no access to his property. Viewed from either of the two angles, the sale deed dated 10.4.89 could not be said to reflect a price which a normal willing purchaser would pay in normal market conditions. Moreover, both the sale deeds were of plots which were not proximate in terms of distance, both being situated at a distance of about a km. from the acquired land.

15. Admittedly , all the three sale deeds produced by the applicant are post-notification sale deeds. In support of the submission that such sale deeds could be used as a basis for fixing the market value of the land, Shri Noronha, the learned counsel of the applicant has placed reliance on the case of **Mehta Ravindrarai Ajitrai v. State of Gujarat** (A.I.R**. 1989 S.C. 2051). In** this case the Notification was published on 6.8.1956 and the sale deed dated 2.4.57 was made pursuant to an agreement dated 21.1.1957 and the Supreme Court

observed that although the said agreement for sale in connection with that land pertained to a sale after the acquisition, it can be fairly regarded as reasonably proximate to the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition, the said agreement dated 21.1.1957 must be regarded as furnishing some light on the market value of the land on the date of publication of S.4 notification. The Supreme Court further observed that:-

" However, certain factors have to be taken into account and appropriate deductions made from the rate disclosed in the said agreement to sell in estimating the market value of the land with which we are concerned at the date of the acquisition. One of these factors is that there seems to have been some rise in the price of land on account of the acquisition of the land in question before us for purposes of constructing an industrial estate. Another factor is that the land proposed to be purchased under the said agreement to sell was adjoining the land of the purchaser and the purchaser might have paid some extra amount for the convenience of getting the neighbouring land. "

16. Shri Noronha also relied on the **case of Koyappathodi M. Ayisha Umma v. State of Kerala** (A.I.R. **1991 S.C. 2027)** in support of his submission that what has got to be considered is the price paid within a reasonable time in bona fide transaction o f the purchase or sale of the lands acquired or the lands adjacent to the

lands acquired and possessing similar advantages and such sales need not necessarily be pre-notification sale deeds.

17. On the other hand, Shri Kamat , the learned Government Advocate submitted that the sale deeds being post-notification sale deeds, could not have been relied upon at all. He relied on the case of **Karan Singh and others v. Union of India** (A.I.R. **1997 S.C. 3889)** . In this case the Supreme Court referred to its earlier decision reported in **the case of Administrator General of West Bengal v. Collector, Varanasi** (A.I.R. 1988 S.C. 943) and observed that :-

" It is, therefore, no longer in doubt that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, under certain conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. It has also to be borne in mind that if the claimant relies on any post-notification transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4 of the Act and the date of transaction

of sale (emphasis supplied). “

18. The Court also placed reliance on its earlier decision in the case of **Pal Singh v. Union Territory of Chandigarh (1992 A.I.R. S.C.W. 2860)** wherein it was observed thus :-

“ But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it would furnish the basis for determining the market value of the acquired land. “

19. The Hon'ble Supreme Court therefore followed what was stated earlier by the Supreme Court in the case of Pal Singh v. Union Territory of Chandigarh (supra) and held that:-

“ It is only the previous judgment of a Court or an Award which can be made basis for assessment of the market value of the acquired land subject to party relying such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land. “

20.In our view, there appears to be no inflexible principle laid down

by the Hon'ble Supreme Court that no post-notification sale deed under any circumstances can be taken as a guide and that will depend on facts of each case. We are fortified in our view by another recent judgment of the Supreme Court wherein it is stated that the most reliable way to determine the market value is to rely on instances made shortly before or after the Section 4 notification (See 2004 A.I.R. SCW 66).

21. Admittedly, this acquisition took place for the purpose of development of Benaulim beach and of a comparatively small patlch of land. This acquisition would not send the prices rolling uup in Benaulim village. Admittedly also, the sale deed dated 28.6.89 was just four months after the date of notification and it was of developed plot and the development process itself must have certainly started much prior to the date of the said notification under Section 4 of the Act. Considering these facts, in our opinion, the sale deed dated 28.6.89 could not have been simply brushed aside as a post-notification sale deed. The same could form the basis for fixing the market value of the acquired land by making a suitable deduction towards development. Considering that the price paid was Rs.175/- per sq.m. for the said two plots of sale deed dated 28.6.89 , in our view a deduction of 40% would be justified towards cost of development. We therefore fix the compensation payable to the applicant at Rs.105/- per sq.m. in respect of 5250 sq.m.

22. The next grievance made on behalf of the applicant is that by the present acquisition their remaining property o survey No.363/1 was severed as a result of which it has now remained landlocked without there being any access. The applicant in his evidence before the Court had stated that in view of the acquisition the property under survey No.363/1 remained blocked without any access . There is no doubt that no issue on this aspect was framed by the Court nor such a plea was taken by the applicant in his application for reference. Nevertheless if the Court is required to determine the market value of the acquired land by sitting on the armchair of a willing purchaser and in our view it is right so, this factor certainly ought to have been considered by the learned Trial Court. Shri Noronha has placed reliance on several decisions regarding this aspect of the case . In **Government v. The Century Spinning and Manufacturing Co. Ltd. (A.I.R. (29) 1942 Bombay 105)** wherein this Court observed that when large proportion of frontage is acquired and a relatively small amount of frontage is left with the owner of the remaining land, he is entitled to some compensation in respect of severance. Reliance has also been placed on the case of **Radhey Shyam v. Haryana State (A.I.R. 1981 P. & H. 57)** wherein it is observed that the claimants were entitled to compensation for severance. In the case of **Smt. Kasturi Devi and others v. The Collector, Nainital (A.I.R. 1983 Allahabad 338)** after the acquisition of 20,000 sq. ft. of land the remaining area was deprived of frontage on the road and a Division Bench of that Court observed that this would certainly

diminish the value of the land to some extent. However, no evidence was produced to show as to what extent the value of the remaining land had diminished, but still the Court held, that it was difficult to hold that severance of the disputed land had diminished the value of the remaining land and in the absence of positive evidence, the Court considered to award Rs.2000/- as damages sustained by the applicants on account of severance of land. In the case of **Amirbibi and others v. Special Land Acquisition Officer (A.I.R. 1981 Gujarat 219)** a Division Bench of that Court stated that it could not be laid down as a rule of law that where expert assistance is not available and where a reasonable guess can be made from whatever evidence there is on record, the Court would be precluded from doing so only because the expert evidence is not led in a particular case. The Court further felt that damage suffered by the claimants could not go uncompensated altogether and that they should make their best endeavour to mete out justice to them, although they must be on guard while doing so, as their conclusion must be based on a broad basis and common sense inference. The Court therefore proceeded after considering pros and cons of the questions to award compensation for injurious affection to Rs.2/- per sq. metre as it would serve the purpose.

23. In the case at hand not only was there no issue framed, there was also no evidence led by the applicant to show the estimated loss which he had suffered to the remaining property by virtue of this

acquisition which has rendered his remaining property landlocked . It is in evidence of AW.3 Dessai that the unacquired area is about 18,500 sq.m. This statement was not disputed. We consider it appropriate in the interest of justice that the applicant be awarded compensation for severance at the rate of Rs.5/- per sq.m. for the balance area of 18,500 sq.m.

24. In view of the above, the First Appeal No.238/2002 partly succeeds and First Appeal No.239/2002 partly succeeds. Consequently the Judgment/Award of the Trial Court is hereby modified, in that the applicant will now not get any enhancement as far as the area of 15,000 sq.m. are concerned, but as far as the remaining area of 5250 sq.m. is concerned, the applicant shall be paid compensation at the rate of Rs.105/- per sq.m. We consider it appropriate to award to the applicant a sum of Rs.5/- per sq.m. for the remaining land of the applicant admeasuring about 18,500 sq.m., the said land having been severed and its market value having been diminished on account of the acquisition of other land of the applicant including the road. Parties to bear their own costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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